UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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LINDA MURDAUGH,

10 CV 7218 (HB)(DCF)

Plaintiff,

- against -

THE CITY OF NEW YORK and IQBAL SULEHRIA, individually and in his official capacity as an employee of the New York City Department of Correction,

Defendants.

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MEMORANDUM OF LAW SUPPORTING PLAINTIFF'S MOTION FOR RECONSIDERATION OF SO MUCH OF THE COURT'S MARCH 8, 2011 OPINION AND ORDER AS GRANTED DEFENDANT CITY'S FED.R.CIV.P. 12(b)(6) MOTION TO DISMISS PLAINTIFF'S CLAIM FOR CONSTRUCTIVE DISCHARGE

Fred Lichtmacher
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March 22, 2011

UNITED STATES DISTRICT COURT
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LINDA MURDAUGH,

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THE CITY OF NEW YORK and IQBAL SULEHRIA, individually and in his official capacity as an employee of the New York City Department of Correction,

Defendants.

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Preliminary Statement

Plaintiff asks that the Court reconsider so much of the March 8, 2011 Opinion and Order as dismissed Ms. Murdaugh's claim for constructive discharge, see Decision at pp.8-9, and, upon reconsideration, reinstate that claim. The Court overlooked facts and dismissed the claim based on an erroneous analysis of the pleading, finding that Ms. Murdaugh had not sufficiently pled that the City's failure to act was intentional or deliberate. The Amended Complaint meets applicable pleading standards, and that branch of defendant City's Rule 12(b)(6) motion as sought dismissal of the constructive discharge claim should have been denied.

Plaintiff's claims arise from the years-long campaign of harassment and discrimination perpetrated against Linda Murdaugh, a former-Correction Officer, by defendant Iqbal Sulehria, a former-co-worker, and defendant City of New York's utter failure to appropriately address and remedy the matter despite notice of the untenable situation. Ms. Murdaugh's First Amended Complaint details Sulehria's unremitting bigoted, sexist and hostile conduct and attitude and that defendant City knew and did nothing. The pleading sets out facts which, taken together with reasonable inferences, demonstrate a long and predictable pattern of discrimination based on Ms. Murdaugh's race and gender, impermissible retaliation against her and, with the City's knowledge and tolerance, the creation of a sustained and continuous hostile work environment ultimately resulting in plaintiff's constructive discharge.

Statement of Facts

No statement of facts is set out herein. Plaintiff refers the Court to the facts alleged in her First Amended Complaint (Docket 13) and appearing in the exhibits annexed to the November 30, 2010 Declaration in Opposition to Defendant City's Motion to Dismiss (Docket 14) and in the Memorandum of Law in Opposition to Defendant City's Motion to Dismiss at pp.4-14 (Docket 15)./[1]

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1. Discovery took place during the pendency of the City's 12(b)(6) motion and the City disclosed evidence not in plaintiff's possession when she drafted her Complaint and Amended Complaint which provides further evidence that the Department of Correction knew of Sulehria's bigoted, sexist and hostile behavior and attitude but did nothing. Appended hereto for informational purposes are documents numbered LM004870-71: January 12, 2009 Memorandum from Deputy Warden Diaz to Warden Bailey, written about two months after defendant Sulehria's return; LM004868-69: January 26, 2009 Deputy Warden Diaz's Memorandum to Warden Bailey recounting a corrective interview and asking for Sulehria's transfer from E.M.T.C.; LM004861-62: December 2, 2009 Memorandum from Deputy Warden Diaz to Warden Bailey again asking that Sulehria be transferred; LM004845-46: December 21, 2009 Memorandum from Deputy Warden Diaz to Warden Bailey recounting a second attempt at corrective counseling of defendant Sulehria and again asking for Sulehria's transfer and that plaintiff's schedule be adjusted to avoid all contact with Sulehria. This evidence will be used to support a motion to amend the complaint under Fed.R.Civ.P. 15 and 60(b).

ARGUMENT

THE COURT OVERLOOKED FACTS ADEQUATELY PLEADING A CONSTRUCTIVE DISCHARGE CLAIM. THIS COURT SHOULD RECONSIDER THE MARCH 8, 2011 OPINION AND ORDER AND, UPON RECONSIDERATION, REINSTATE THAT CLAIM.

This Court overlooked that the First Amended Complaint meets the standard for stating claims for constructive discharge under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., the New York State Human Rights Law, N.Y. Exec. L. §296 and the New York City Human Rights Law, N.Y.C. Admin. Code §8-502.

Plaintiff adequately pled deliberate decisions and inaction by defendant City's Department of Correction leading to intolerable work conditions supporting a claim for constructive discharge. The First Amended Complaint pleads, and is further supported by disclosures made during the pendency of the City's motion, that "the employer's actions were 'deliberate' and not merely 'negligent or ineffective.'" Petrosino v. Bell Atlantic, 385 F.3d 210, 229-230 (2d Cir. 2004).

- The Department of Correction made the deliberate decision to return defendant Sulehria to plaintiff's workplace despite knowledge of the long history of bigoted, sexist and hostile behavior and attitudes. See First Amended Complaint at ¶¶48-50
- Plaintiff immediately complained about Sulehria and requested a tour change. Id. at ¶¶52, 53
- The City's Department of Correction knew of the January 22, 2009 incident whereby Sulehria falsely claimed that plaintiff Murdaugh made harassing phone calls, including the claim that she called him a bastard Muslim terrorist and to kiss her black ass. Id. at ¶ 59
- The Department received, considered and ignored Legal Coordinator Typhanie Lynch's August 19, 2009 memorandum regarding Sulehria's hostility towards woman. Id. at ¶60, ¶77; Exh. 16

- The City received, considered and ignored the September 4, 2009 inmate memorandum regarding Sulehria's hostility towards Murdaugh. Id. at ¶63, ¶78; Exh. 17 and Exh. 18

- The Department of Correction considered and refused to act on Ms. Murdaugh's November 4, 2009 request that she and defendant not work at the same time. Id. at ¶64

- The Department considered and declined to act on Ms. Murdaugh's December 15, 2009 request to limit her time spent in the Law Library with Sulehria. Id. at ¶66

- The City knew, considered and did not act on Ms. Murdaugh's request for a tour change made after Sulehria's February 4, 2010 claim that plaintiff publicly verbally insulted him, calling him a "piece of shit" and a "fucking Muslim," thereby commencing yet another onerous and stressful official Departmental investigation against plaintiff. Id. at ¶67; Exh. 19

Plaintiff has uncovered new evidence during discovery indicating the Department's knowledge and consideration of plaintiff's 2008 complaints regarding Sulehria's pre-November 2008 conduct, Sulehria's post-return conduct and attitude and Murdaugh's requests for tour changes. For instance, the newly-disclosed January 12, 2009 Memorandum from Deputy Warden Diaz to Warden Bailey (LM004870-71), made about two months after defendant Sulehria was returned to plaintiff's workplace, acknowledges that Sulehria's "accusations can serve to create a hostile work environment," "may resurrect prior conflict," and that Sulehria was the subject of a claim of violence against an Hispanic inmate. LM004870. Deputy Warden Diaz's newly-disclosed January 26, 2009 Memorandum to Warden Bailey (LM004868-69), made less than three months after defendant Sulehria's return, recounted a January 23, 2009 forty-five minute long conference had with Sulehria to address his past conflict with Ms. Murdaugh and that his "actions ... [were] inappropriate and detrimental to a good working environment." LM004868. Sulehria "took exception" to the Deputy Warden's effort at "corrective counseling." Id. It was not until the next day that Deputy Warden Diaz received Sulehria's January 22, 2009 Memorandum accusing Ms. Murdaugh of "'Criminal Conduct' and 'Aggravated Harassment'" Id. The Deputy Warden concluded that Mr. Sulehria is "very confrontational and intent on creating conflict with fellow employees," "has met requests to refrain from potentially slanderous behavior with blatant disregard" and that Diaz "strongly believe[s] that Mr. Sulehria will not allow himself to coexist with Correction Officer Murdaugh." LM004868-69 (emphasis in original). Diaz "**strongly** recommend[ed]" to Warden Baily that Sulehria be transferred from the Eric M. Thomas Center and "question[ed Sulehria's] ability to function" as a Legal Coordinator for the Department. LM004869 (emphasis in original).

About ten months later, Deputy Warden Diaz wrote Warden Bailey another newly-disclosed memorandum (LM004861-62) noting Ms. Murdaugh's November 12, 2009 request that Sulehria be transferred from EMTC and recounting his January 2009 investigation and recommendation that Sulehria be transferred. Deputy Warden Diaz reiterated to the Warden that Sulehria is "intent on creating a hostile work environment" based on past differences with Ms. Murdaugh, continues to "generate baseless allegations, accusation, and slanderous statements," and that he "strongly recommend[s]" Sulehria's transfer from EMTC. LM004862. Later that month, on December 21, 2009, Deputy Warden Diaz again wrote Warden Bailey, this time about another forty-five minute long attempted corrective interview of defendant Sulehria taking place on December 17, 2009. LM004845-46. This newly-disclosed evidence indicates that when Diaz asked Sulehria what could be done to improve the working relationship among Law Library Staff, Sulehria essentially threatened to ratchet up the situation: "If they do not start to follow rules, things will get wors[e].” LM004845. Diaz again asked that Sulehria be transferred from EMTC, Id., and that, while his recommendation was being considered, Legal Coordinator Typhanie Lynch and Ms. Murdaugh’s schedules be adjusted to “prevent any physical contact with Mr. Sulehria.” LM004846. About six weeks later, on February 4, 2010, Mr. Sulehria alleged that Ms. Murdaugh publicly verbally insulted him, calling him a “piece of shit” and a “fucking Muslim,” thereby commencing another Departmental investigation against plaintiff. Id. at ¶67; Exh. 19.

Plaintiff pled facts and has uncovered additional facts sufficient to support that defendant City of New York, through its Correction Department, made the deliberate personnel decision to keep plaintiff and defendant Sulehria working together despite Sulehria’s bigoted, sexist and hostile behavior and attitude.

Conclusion

Plaintiff respectfully requests that this Court reconsider so much of the March 8, 2011 Opinion and Order as granted defendant City’s motion to dismiss plaintiff’s constructive discharge claim and, upon reconsideration, deny that branch of the City’s Rule 12(b)(6) motion, together with such other and further relief as this Court deems just.

Dated: March 22, 2011
Brooklyn, New York

Matthew Flamm
Attorney for Plaintiff
26 Court Street, Suite 600
Brooklyn, New York
(718) 797-3117

600 AR Department of Correction – Intradepartmental Memorandum

Date : January 12, 2009

To : Emmanuel H. Bailey, Warden

From : William Diaz, Deputy Warden, Programs

Subject : **IQBAL SULEHRIA, LEGAL COORDINATOR**

On December 26, 2008 Correction Officer Murdaugh, Linda, shield # 3276 submitted a report along with other supporting documentation, wherein she described several incidents involving allegations, false accusations, and claims of harassment between her and Legal Coordinator Mr. Sulehria, Iqbal. The incident occurred during 2005 and 2006, resulting in Mr. Sulehria being made the subject of formal charges, subsequently being suspended for sixty days. Officer Murdock also claimed that Mr. Sulehria has resumed making inflammatory remarks about her to supervisors, co-workers, and inmates. She named Mark Scott, Deputy Warden; Kelly Gonzalez, Correction Officer, and Jeanette Carter, Correction Officer as staff members having stated that they heard Mr. Sulehria accused her of bizarre behavior.

Upon interview both Mark Scott and Jeanette Carter reported that during separate conversations Mr. Sulehria claimed that, sometime in the past, Correction Officer Murdaugh had "defecated" on his desk. Officers Kelly Gonzalez and Jeanette Carter reported similarly that, during separate occasions, he offered to assist them with any legal matter that they had. While Mr. Sulehria does not seem to have brought forth any "new" allegations, his continued reiteration of past accusations can serve to create a hostile environment or in the least foster an unharmonious environment in the work place. Additionally, Mr. Sulehria's offers of legal assistance and/or legal advise may seem to imply or suggest that Mr. Sulehria is holding himself out as an attorney.

In addition to the concerns expressed by Correction Officer Murdaugh, Mr. Sulehria has been made the subject of an allegation generated by an inmate housed in Eric M. Taylor Center. Inmate Rosario, Louis, Book & Case # 895-080-1823 claims that on December 24, 2008, Mr. Sulehria grabbed and shoved him against a wall inside of the Eric M. Taylor Center Law Library. While this allegation is currently under investigation and may prove unsubstantiated, it seems to support the fact that Mr. Sulehria could be creating an unsettling work environment.

In conclusion, I find that Mr. Sulehria's recanting of past incidents will only serve to resurrect a prior conflict while his attempts to offer legal assistance to other Department of Correction employees may constitute a conflict of interest and a violation of departmental rules. At this juncture, I cannot conclude for certain that Mr. Sulehria has intentionally set out to create unrest, as such I will counsel Mr. Sulehria against comporting himself in this unacceptable behavior and thereafter closely monitor his behavior.

As a final note, it should be mentioned that on November 2008 Mr. Sulehria was reassigned to the Eric M. Taylor Center after having been transferred throughout several different commands within the agency. The Director of Law Library Karen Powell explained that, unfortunately while Mr. Sulehria has a history of discord with both uniformed and non-uniformed coworkers, he has served out any disciplinary penalties imposed upon him and has been cleared to resume in his capacity as a Legal Coordinator. Mr. Sulehria was returned to Eric M. Taylor Center where it is believed that due to the low volume of inmate attendance, any future instance involving staff unrest would have the least negative impact on the agencies inmate population overall.

If additional information is required, please advise.

William Diaz
Deputy Warden

WD/mb

C: Darlene Merritt, Deputy Warden, Administration
Stephen Wettenstein, Deputy Warden, Security

The City of New York

NEW YORK CITY DEPARTMENT OF CORRECTION
Martin F. Horn, Commissioner
Emmanuel H. Bailey, Warden
Eric M. Taylor Center
10-10 Hazen Street
East Elmhurst, NY 11370
718 - 546-5700
Fax 718 - 546-5729

DATE : January 26, 2009

TO : Emmanuel H. Bailey, Warden, Eric M. Taylor Center

FROM : William Diaz, Deputy Warden, Programs

SUBJECT : IQBAL SULEHRIA, LEGAL COORDINATOR

On January 23, 2009 at approximately 1645 hours I had a conference with Mr. Iqbal Sulehria, in my office located in the Programs area. In the presence of Captain Phillips, Latarsha, shield # 951, I inform Mr. Sulehria that I had received information that he had told a couple of uniformed staff members about a past conflict with Law Library Officer Murdaugh, Linda # 3276 of which he repeated some details that described extremely bizarre behavior on her part. I also informed him that it had been mentioned that he had been offering legal advise/assistance, leading some to think that he was holding himself out to be an attorney. I explained that I did not believe his actions to be intentional, however resurfacing past conflicts and offering legal assistance to Correction Officers was both inappropriate and detrimental to a good working environment. Mr. Sulehria took exception to corrective counseling stating that Correction Officer Murdaugh was the one bringing up the past saying, "I am not the one writing reports to you". He went on to say that she continues to write about him to the administration believing that he will be removed from Eric M. Taylor Center. He then began to describe other prior confrontations, claiming that he has a lawsuit against Correction Officer Murdaugh pending in Federal Court. Lastly, he said that she is a racist who thinks that "Blacks" rule because the Captain is black and the Deputy and the Warden are black.

At the conclusion of the conversation that lasted approximately forty-five minutes, Mr. Sulehria acknowledged that revisiting the past and repeating details of past confrontations was not in the best interest of any individual for the business of the agency.

However, upon my return to the facility, on the following day, I received a inter-departmental memorandum from Mr. Sulehria accusing CO Murdaugh of "Criminal Conduct" and "Aggravated Harassment", claiming that at 1800 hours on January 22, 2009, Correction Officer Murdaugh called him on the Law Library phone and called him a "Bastard Muslim terrorist..." in retaliation for him having informed this writer that the heat in the Law Library was inadequate.

Based on reports received from uniformed staff, and my conversation with Mr. Sulehria, I concluded that he is a difficult individual who is very confrontational and intent on creating conflict with fellow employees. He has met requests to refrain from potentially slanderous behavior with blatant disregard.

I strongly believe that Mr. Sulehria will not allow himself to coexist with Correction Officer Murdaugh within the work place. The fact that several Correction Officers have reported questionable behavior on the part of Mr. Sulehria as well as an inmate having lodged an allegation that he had been physically assaulted by the legal coordinator indicates that Mr. Sulehria is the "common denominator". As such, I strongly recommend that he be transferred out of Eric M. Taylor Center. Additionally, given his past history, and continued behavior, I question his ability to function in his employment capacity, where it is essential to successfully interact with Correction Officers and incarcerants for the good order and safety of every person in the facility.

Should you require additional information, please advise.

EHB/mb

C: Joe Jones, Deputy Warden, Administration
Karen Powell, Director, Law Libraries
Ari Wax, Assistant Commissioner, Programs

600 AR Department of Correction – Intradepartmental Memorandum

Date : December 2, 2009

To : Emmanuel H. Bailey, Warden, Eric M. Taylor Center

From : Deputy Warden William Diaz, Programs

Subject : **IQBAL SULEHRIA**

Correction Officer Murdaugh, Linda, shield #3276, submitted a interdepartmental memorandum requesting that the Eric M. Taylor Center, 1400x2200 tour Legal Coordinator Mr. Iqbal Sulehria be transferred our of the facility. The memorandum dated November 12, 2009 recounted some of the troubled history between her and Mr. Sulehria as well as a more current incident that transpired on Tuesday, November 3, 2009. On that day, Mr. Suleria arrived at approximately 1300 hours (one hour prior to the commencement of his tour). He entered into the library despite having been reminded by Correction Officer Murdaugh that he was not to be in the facility prior to 1400 hours to prevent any contact between himself and Correction Officer Murdaugh whose tour ends at 1400 hours. Shortly thereafter I summoned Mr. Sulehria to my office where he explained that he had not adjusted his watch back to Eastern Standard Time. He then departed the facility until the commencement of his assigned tour of duty.

Correction Officer Murdaugh, Linda, also expressed concerns about Mr. Sulehria's continued strange behavior. She described instances of "fits of rage", unnecessary yelling and screaming and occasions where he carries his briefcase and coat with him to the bathroom and exits leaving behind unflushed feces in the toilet bowl. The Steadily assigned 1400x2200 tour Correction Officer Walter McNeil, shield # 9077, confirmed that he has noticed Mr. Sulehria entering the bathroom with his briefcase and believes that Mr. Sulehria is in the process of launching his next complaint and doesn't want anyone to pry into his documents. He added that the episodes of anger and shouting are usually when he is talking on the telephone. Finally, Correction Officer McNeil has attributed Mr. Sulehria's unsanitary behavior to poor home training.

On January of 2009 I had investigated several complaints between Correction Officer Murdaugh and Mr. Sulehria. I concluded then that Mr. Sulehria is a difficult individual who is very confrontational and intent on creating conflict with his fellow employees. I recommended that he be transferred out of the Eric M. Taylor Center, as his failure to coexist with coworkers and inmates alike threatens the good order and safety of the facility.

Since then Mr. Sulehria has added the 7X3 Eric M. Taylor Center Legal Coordinator Ms. Stephanie Lynch, Programs Supervisor Captain Latarsha Phillips and myself to the listed of individuals that he has made the subject of complaints.

In closing, I will reiterate that Mr. Sulehria is intent on creating a hostile environment for certain individuals who he has had differences in past. He continues to generate baseless allegations, accusations, and slanderous statements against them. As such, I strongly recommend that Mr. Sulehria be transferred out the Eric M. Taylor Center to prevent future confrontations.

WD/mb

The City of New York

NEW YORK CITY DEPARTMENT OF CORRECTION
Dora B. Schriro, Commissioner

Emmanuel H. Bailey, Warden
Eric M. Taylor Center
10-10 Hazen Street
East Elmhurst, NY 11370
718 - 546-5700
Fax 718 -546-5729

DATE : December 21, 2009

TO : Emmanuel H. Bailey, Warden, Eric M. Taylor Center

FROM : William Diaz, Deputy Warden, Programs

SUBJECT : **IQBAL SULEHRIA, LEGAL COORDINATOR**

On December 17, 2009 at approximately 1615 hours, I met with Law Library Legal Coordinator Mr. Sulehria, Iqbal in my office. Programs Captain Brown, Kiesha, shield #1605 was present at the meeting, which lasted approximately (45) forty-five minutes. Mr. Sulehria repeated the details of his prior complaints and stated that his daytime counterpart, Ms. Typhanie Lynch and daytime Law Library Correction Officer Murdaugh, Linda, shield # 3276 in cahoots and orchestrating false claims against him. He stated that Correction Officer Murdaugh has issues with him because she does not respect his authority and feels that she is the "Big Boss" and a "Bully" or "Dictator". He says Ms Lynch, has issues with him because he will not tolerate her tardiness and her violations of the rules. He added that they continue to try to "Set him up" by making false accusations and orchestrating inmate complaints against him, with the hopes that he will be transferred out.

Ms. Lynch rejected an invitation to join the meeting stating that she would not subject herself to having to hear Mr. Sulehria continue to lie. She said that any differences of opinion or disagreement would only fuel him to further retaliate with outlandish allegations.

Finally I asked Mr. Sulehria; what can be done to improve the working relation among Law Library Staff. He responded by saying that, "If they do not start to follow rules, things will get worst" He added that Correction Officer Murdaugh should be reassigned to a Housing Area and Ms. Lynch should be transferred to GRVC where an inmate spat on a Legal Coordinator subsequently resulting in the Legal Coordinator's termination, for spitting back at the inmate.

Based on my interaction with Mr. Sulehria, I recommend that he be transferred out of the Eric M. Taylor Center as he continues to create conflict and dissention between himself and other employees. I informed him that while he is not the only one generating complaints or making allegations, his seem to be the most reckless, slanderous and irresponsible. I pointed out that in his complaint generated (2) two days prior (12/15/09) he accused Ms. Lynch as having participated in "Criminal Acts" "Harassment, Unlawful Discrimination and Retaliation" and stated that she "stole" city time. I reminded him that his serious allegations have seen been generated shortly after he was named as the subject of a complaint, suggesting that his complainants are retaliatory in nature.

In closing I further recommend that while the transfer Mr. Suleheria is being considered, the work schedules of Ms. Lynch and Correction Officer Murdaugh be adjusted to 0500x1300 to prevent any physical contact with Mr. Sulehria. The tour adjustments will not interfere with Legal Coordinator coverage nor will it limit the hours of availability to the inmate population.

Should you require additional information, please advise.

EHB/ab

C: Joe Jones, Deputy Warden, Administration
Karen Powell, Director, Law Libraries
Ari Wax, Assistant Commissioner, Programs